

1 BRIAN R. STRANGE (SBN 103252)
2 *lacounsel@earthlink.net*
3 GRETCHEN CARPENTER (SBN 180525)
4 *gcarpenter@strangeandcarpenter.com*
5 JOHN P. KRISTENSEN (SBN 224132)
6 *jkristensen@strangeandcarpenter.com*
7 STRANGE & CARPENTER
8 12100 Wilshire Blvd., Suite 1900
9 Los Angeles, CA 90025
10 Telephone: 310-207-5055; Fax: 310-826-3210

11 STEPHEN G. SVAJIAN (SBN 266581)
12 *ssvajian@gmail.com*
13 SGS LAW GROUP
14 512 6th Street
15 Manhattan Beach, CA 90266
16 Telephone: 310-433-2920

17 Attorneys for Plaintiff DONE! Ventures, LLC

18 **UNITED STATES DISTRICT COURT**
19 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
20 **WESTERN DISTRICT**

21 DONE! VENTURES, LLC, a
22 Delaware Limited Liability
23 Company,

24 Plaintiff,

25 vs.

26 GENERAL ELECTRIC
27 COMPANY, a New York
28 Corporation; NBC UNIVERSAL,
INC., a Delaware corporation;
IVILLAGE, INC., a Delaware
Corporation, and DOES 1 through
10, inclusive,

Defendants.

Case No. 2:10-cv-04420-SJO-JC

**PLAINTIFF'S NOTICE OF
MOTION FOR LEAVE OF
COURT TO AMEND THE
COMPLAINT TO ADD
SEDO.COM AS A DEFENDANT**

Hearing Date: May 9, 2011

Time: 10:00 a.m.

Courtroom: "1"

Assigned to the Honorable S. James
Otero

[Filed Concurrently with [Proposed]
Order and [Proposed] First
Amended Complaint]

TO ALL COUNSEL AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 9, 2011, at 10:00 a.m. or as soon

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 This matter was originally filed as a breach of contract case by Plaintiff
5 against defendants General Electric Company (hereinafter “GE”), NBC
6 Universal, Inc. (hereinafter “NBC Universal”) and iVillage, Inc. (hereinafter
7 “iVillage”) (hereinafter collectively “NBC”). Plaintiff completed a contract with
8 NBC through a third party broker, Sedo.com (hereinafter “Sedo”), for the domain
9 names women.com and women.net (hereinafter collectively “women.com.”).
10 Three days later, then NBC Universal CEO Jeff Zucker ordered the NBC
11 Defendants to repudiate the contract with DONE! and refused to transfer
12 women.com to Plaintiff.

13 NBC contends Sedo did not have authority to enter into the subject
14 transaction, or if it did have authority, there was no contract formation between
15 Done! and NBC. Plaintiff strongly disputes NBC’s allegations. However,
16 Plaintiff has elected to name Sedo as a Defendant, to account for the event there
17 is a finding that Sedo was not an agent, or there was no meeting of the minds
18 because of Sedo’s representations.

19 The proposed First Amended Complaint does not include any new causes
20 of action against NBC. The only changes in the claims against NBC is the
21 breach of contract and declaratory relief claims now contain a specific monetary
22 amount for jurisdiction purposes in the highly unlikely event NBC’s Answer is
23 stricken. The original Complaint alleged the breach of contract damages were to
24 be proved at trial, instead of identifying the amount alleged. That procedure is
25 proper only for tort-based causes of action.

26 ///

27 ///

28 ///

1 II.

2 **FEDERAL LAW STRONGLY FAVORS AMENDMENTS TO COMPLAINTS**

3 Fed.R.Civ.P. Rules 15(a)(2) states in pertinent part:

4 ...[A] party may amend its pleading only with opposing party's
5 written consent or the court's leave. The court should freely give
6 leave when justice so requires.
7

8 Federal policy strongly favors determination of cases on their merits.
9 Therefore, the role of pleadings is limited, and leave to amend the pleading is
10 freely given unless the opposing party makes a strong showing of undue
11 prejudice, or bad faith or dilatory motive on the part of the moving party. *Foman*
12 *v. Davis*, 371 U.S. 178, 182 (1962); *Filmtec Com. v. Hydranautics*, 67 F.3d 931,
13 935-36 (Fed. Cir. 1995); *Martinez v. Newport Beach City*, 125 F.3d 777, 785 (9th
14 Cir. 1997.)

15 While leave to amend should not be granted automatically, **the**
16 **circumstances under which Rule 15(a) permits denial of leave to amend are**
17 **limited.** *YncJan v. Department of Air Force*, 943 F.2d 1388, 1391 (5th Cir.
18 1991) (emphasis added.) The Ninth Circuit jurisprudence mandates the policy
19 favoring amendments is to be applied with "extreme liberality." *Eminence*
20 *Capital, LLC v. Aspeon. Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003.)

21 Plaintiff is seeking to add a party approximately ten (10) months after the
22 alleged breach of a contract. Plaintiff has yet to receive even a single document
23 from NBC in discovery and is filing this Motion pursuant to the Court's April 7,
24 2011 deadline.

25 ///

26 ///

27 ///

1 **III.**

2 **PLAINTIFF MET & CONFERRED WITH NBC**

3 Plaintiff met and conferred with Sedo in February 2011 about potentially
4 naming Sedo as a partner. Plaintiff has not received any documentary evidence
5 from NBC through discovery. Without the documents, Plaintiff is not prepared
6 to add any new causes of action or prayers for new forms of damages against
7 NBC. However, DONE! is naming Sedo as a defendant. Plaintiff informed
8 NBC of this and provided the Proposed First Amended Complaint to NBC once
9 it was completed.

10 **IV.**

11 **PROPOSED FIRST AMENDED COMPLAINT**

12 The Proposed First Amended Complaint is filed concurrently pursuant to
13 Local Rule 15-1. It does not include new causes of action against NBC. It only
14 clarifies the amount of damages under the breach of contract causes of action,
15 which were silent beforehand. This is done solely for jurisdictional purposes.
16 The causes of action against Sedo, and not NBC, are for breach of warranty of
17 authority under *California Civ. Code* § 2342, breach of fiduciary duty and
18 negligent misrepresentation. These three (3) causes of action, are based on the
19 representations made by Sedo to DONE!. Sedo is also named in the breach of
20 contract and declaratory relief causes of action.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

